IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-JV 2006-0062
	)	DEPARTMENT A
	)	
IN RE JOHN T.	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 15496701

Honorable Stephen M. Rubin, Judge Pro Tempore

AFFIRMED

Barbara LaWall, Pima County Attorney
By Dale Cardy
Tucson
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Robert J. Hooker, Pima County Public Defender
By Eva K. Bacal
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H O W A R D, Presiding Judge.

¶1 John T. was charged in a delinquency petition with burglary in the second degree and theft by control. He admitted the burglary charge, and the theft charge was dismissed. The parties agreed his maximum restitution amount would be $5,500. Six weeks

after the juvenile court placed John on intensive probation, the court held a restitution hearing at which the burglary victim testified. The court subsequently ordered John to pay $2,500 in restitution. John challenges the amount on appeal, arguing it was based on "pure conjecture" and he should not be responsible for paying restitution for items "that someone else may have taken at some other time." We review an award of restitution for an abuse of discretion. *In re William L.*, 211 Ariz. 236, ¶ 10, 119 P.3d 1039, 1042 (App. 2005). And we "will uphold [a] restitution award if it bears a reasonable relationship to the victim's loss." *In re Ryan A.*, 202 Ariz. 19, ¶ 20, 39 P.3d 543, 548 (App. 2002). We find such a relationship here and affirm the award.

¶2 The victim, Lupe Wyant, testified she had kept a jewelry box that contained a velvet bag of gold jewelry, a velvet bag of silver jewelry, and loose "junk" jewelry. She discovered the bag with the gold jewelry was missing on August 6, 2006. Although she did not know when the jewelry disappeared, Wyant said she usually cleaned her jewelry once a month so the theft must have occurred within thirty days before August 6. Wyant suspected John was the thief, and the police officers who responded to her call apparently found some jewelry at his house and returned it to Wyant. But, she testified, a number of items were not returned, and she made a list of those items, describing them as best she could, and enlisting the aid of a salesman at a pawn shop to set values for them. She also testified "99 percent" of the missing jewelry had been gifts. In addition, Wyant described for the juvenile court the items that were returned to her after she called the police. In the

restitution affidavit Wyant submitted at the hearing, she claimed her total financial loss was $5,318 and testified her insurance company had paid her $1,000, the limit of the jewelry coverage in her homeowners insurance policy.[1] As a result, she requested restitution in the amount of $4,318.

¶3 Section 8-344(A), A.R.S., provides in part:

> If a juvenile is adjudicated delinquent, the court, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent.

An award of restitution requires proof by a preponderance of the evidence. *William L.*, 211 Ariz. 236, ¶ 6, 119 P.3d at 1041. And a juvenile court may consider "a verified statement from the victim" describing, inter alia, "reasonable damages for injury to or loss of property." § 8-344(B).

¶4 John argues Wyant did not present credible evidence about the value of her stolen items, pointing out that she did not produce receipts, photographs, or an itemized insurance declaration of the missing items and that the pawn shop salesman did not testify. As a result, he asserts, the juvenile court's restitution award amount was "pulled . . . out of the air." John also cites in support of his arguments the juvenile court's comments at the

[1]Although Wyant testified the figure of $5,318 was the total of the values attributed to the missing items in the list she had made, we note those values actually total $5,168.

restitution hearing that it "ha[d] no idea what these items were worth at all" and that any decision it would make would "not [be] based on any credible evidence of value."

¶5 What John failed to acknowledge either to the juvenile court or to this court and what the state failed to cite at the hearing is the basic, well-established principle of law that "an owner may generally estimate the value of his real or personal property . . . whether he qualifies as an expert or not." *Acheson v. Shafter*, 107 Ariz. 576, 578, 490 P.2d 832, 834 (1971); *accord State v. Rushing*, 156 Ariz. 1, 4, 749 P.2d 910, 913 (1988) ("Ordinarily, the owner of property is competent to give an opinion of its value."); *Atkinson v. Marquart*, 112 Ariz. 304, 307, 541 P.2d 556, 558 (1975); *Murphy v. State*, 50 Ariz. 481, 484-85, 73 P.2d 110, 112 (1937); *State v. Haynie*, 19 Ariz. App. 183, 186, 505 P.2d 1074, 1077 (App. 1973). The trial court apparently thought the victim's valuation was too high and discounted it, in its discretion. That does not invalidate the award.

¶6 The case on which John relies does not assist him. In *State v. Barrett*, 177 Ariz. 46, 47, 49, 864 P.2d 1078, 1079, 1081 (App. 1993), the court held the testimony of a car dealership's finance officer about the dealership's lost profit from a stolen vehicle that was returned a few weeks later was insufficient to support a restitution award absent evidence of the dealership's purchase and sale prices. The witness was not the owner of the property, and the business was seeking lost profits, not the value of the vehicle. And the court also held the evidence was insufficient to establish the loss causation requirement. *Id.* at 49, 864 P.2d at 1081.

¶7 In this case, the evidence showed Wyant had spent an hour and a half with the salesman at the pawn shop, walking the aisles of the store with him looking for similar types of jewelry on which he suggested a value for the items. Contrary to John's assertion, therefore, Wyant's testimony about the value of her missing jewelry provided more than "[m]ere speculation" and "unsupported assurances." Moreover, he presented no evidence that contradicted her testimony. And, because Wyant, as the owner of the jewelry, was qualified to testify about its value, we find no merit to John's complaint about the salesman's failure to testify.

¶8 John also argues the juvenile court abused its discretion in ordering him to pay restitution despite its apparent belief that he had returned all the jewelry he had taken from Wyant. As John notes, he was charged with and admitted acting alone in committing the burglary. As he also notes, he is responsible for any loss he directly caused. *See Ryan A.*, 202 Ariz. 19, ¶ 20, 39 P.3d at 548 ("An appropriate restitution award consists of monies for economic losses that flow directly from or are the direct result of the crime committed."). Contrary to John's assertions, however, the only evidence before us shows he was directly responsible for the victim's loss.

¶9 John admitted having entered Wyant's house with the intent to commit a theft or other felony therein. *See* A.R.S. § 13-1507(A) (listing elements of second-degree burglary). Without explaining why, Wyant testified her first reaction upon discovering her jewelry was missing was to call John's grandfather to say she believed John had broken into

her house and stolen her jewelry. Although she acknowledged the lock had not been broken, she did not testify about anyone other than her son having access to her house. Wyant said her son would not take her jewelry, and although she agreed he has friends, she was never asked whether they had access to her house. In addition, she testified she had no information that anyone besides John had taken the jewelry. And she reported all the jewelry taken, both what was returned and what was not, had been in the same velvet bag, which was not returned.

¶10 Despite John's attempt to characterize the restitution award as including both direct and consequential losses, the evidence shows it covered only Wyant's direct loss, the value of the missing jewelry items. For a victim to recover restitution from a juvenile adjudicated delinquent, the victim must show he or she suffered an economic loss that "the victim would not have incurred but for the [juvenile's delinquent act]" and that "directly result[ed] from the [juvenile's delinquent act]." *In re Stephanie B.*, 204 Ariz. 466, ¶ 10, 65 P.3d 114, 117 (App. 2003). "'If the loss results from the concurrence of some causal event other than the [juvenile's delinquent act], the loss is indirect and consequential . . . .'" *Id.*, *quoting State v. Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d 1131, 1133 (2002).

¶11 The uncontradicted evidence here satisfied each of those requirements. No evidence supports John's hypothesis that "some other boys" might have "got[ten] into the victim's home at some other time in a separate unconnected action." And his citation of *In re Maricopa County Juvenile Action No. JV-128676*, 177 Ariz. 352, 355, 868 P.2d 365,

368 (App. 1994), is misplaced because the court did not impose joint and several liability for the restitution. The basis for the court's comment that it believed John had returned all the items he had taken is not evident on the record before us. We note as well that the comment was made at the conclusion of a hearing held long after John admitted having committed burglary and was placed on probation for it in a ruling separate from the court's restitution order. We find no abuse of discretion in the court's award of restitution.

¶12 Accordingly, we affirm the restitution order.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

GARYE L. VÁSQUEZ, Judge